

**Naval-Industry R&D Partnership Conference 2003**  
**Doing Business with the Navy "101"**



**Commercial Services  
Agreements  
(CSAs)  
aka “Work for Others”**



# Introduction

- **Another “tool” to effect TT**
- **Statutory Details**
- **NAVAIR Implementation**

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## Doing Business with the Navy "101"



## Fiscal Law

### Historical Constraints

- **U.S. Constitution - Article I Section 9, Clause 7**
  - Money drawn from the Treasury must be in “consequence of appropriations made by law”
- **31 U.S.C. 3302 (1849)**
  - Miscellaneous Receipts; Anti-Augmentation rule
- **31 U.S.C. 1341 (1905)**
  - Anti Deficiency Act
- **31 U.S.C. 1301 (1906)**
  - Expenditures must be for the “objects” of the appropriation, “except as otherwise provided by law”

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## **Work for Non-DOD Entities**

### **Regulatory Constraints**

- **ASN/RDA Memo of 12/15/95:**
  - Specific statutory authority required to perform work for non-DoD parties
  - Navy Regulation 0835 may not be used
- **1996 Supplemental Handbook to OMB Circular 1-76:**
  - “Federal agencies shall not provide commercial activities to the private sector. OMB approval or specific statutory authority is required to deviate from this policy.”



## **Background**

- **A complicated mix of statutes exist that allow federal activities to accept funding from outside sources**
- **How did this occur?**
  - **Congress Controls Purse**
    - **Loathe to allow Executive Branch “create” revenue**
    - **Recognized under certain circumstances in best interest to taxpayer**
    - **Over time have “chipped away” at their constitutional authority**
  - **Result: Patchwork of overlapping inconsistent statutes**
- **This presentation describes Agreements created under 3 of those statutes:**



# CSA Statutory Authority

- **10 USC 2681**

“SECDEF may enter into contracts with commercial entities to conduct T&E at **MRTFB** installations.”

- **10 USC 2539b**

“Sell, rent, lend or give samples, data, equipment or materials for IR&D/demo’s to foreign govt’s, or, make available services of **any lab, center or range** for testing materials, equip, models, software and other items.”

- **10 USC 2563 (formerly 2553)**

“Sell articles and services outside of DoD that are manufactured or performed by any **WCF** activity that are not available from a commercial source.”



## TT Perspective

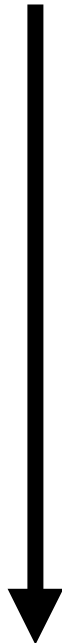
### Gov't IP Interests

### Tools

High

CRADA:

15 U.S.C. 3710a



Low

CSAs

Sell Technical Services  
and Articles:

10 USC 2563

Sell Testing Services:

10 USC 2681/2539b



## What is a CSA?

- **Binding Agreement under which a DoD Working Capital Fund (WCF) or MRTFB activity will sell supplies and/or services to a commercial entity**
- **Sometimes referred to as “Work for Others”**
- **Role reversal from normal commercial business practice**
  - **Seller (Gov’t) dictates terms (statutory compliance)**





## **General Conditions of Sale**

- **Not available from commercial source \***
- **Substantially performed in-house**
- **Non-interference with mission work**
- **Government "Held Harmless" \***
- **In the public interest**
- **Recoup all cost**
- **Payment in advance (can be incremental)**

**\* More discussion follows**



## Commercial Source Unavailable

- **Wording in Statutes/Policy Vary**
  - 2681: “does not compete with private sector” (Statute)
  - 2539b: “undue competition with the private sector” (DoD Policy)
  - 2563: “not available from US commercial source” (Statute)
- **Unavailable/Non-Competition**
  - Determined to be unique
  - Not Reasonably Available
    - Sufficient quality
    - Sufficient quantity
    - Sufficient time
  - Ultimate customer of service/article is DoD (2538b/2681 only)
    - ***Lower Cost is not a valid reason --***



## Hold Harmless Requirement

- **Source**
  - DoD policy requirement for 10 USC 2539b
  - Statutory requirement for 10 USC 2563 (liberalized in customer's favor this year)
  - 10 USC 2681 Silent
- **FY 02 Defense Appropriation Act Amended 2563**
  - Articles and services sold under this authority allows "a claim by a purchaser ... (for) damages or injury (that) arose from the failure of the Government to comply with quality, schedule, or cost performance requirements in the contract to provide the articles or services."



## NAVAIR CSA Initiatives

### ***Reduce Transaction Time/Costs:***

- **Developed Standard T&C's**
  - **Standard**
  - **Task Order**
- **Documented Process and Responsibilities**
- **Capitalized on "Sec 246" Authority to Normalize Approval Levels**
- **Adopted SPAWAR "Program Protection Plan"**

***Result: Agreements in Place in Days!***

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## **Some Past CSA Customers**

- Bath Iron Works
- Lockheed Martin
- Boeing Company
- Cubic Defense Systems
- Northrop Grumman
- Kaman Aerospace Int.
- KDI Precision Products
- SNC Ind. Technologies
- Contraves-Brashear Sys Inc.
- RATEC
- JPL
- Harris Electronics Corp
- BAE Land/Sea Systems
- Teledyne Brown
- Sikorsky Aircraft Co.
- PRIMEX
- General Electric
- Unishpere

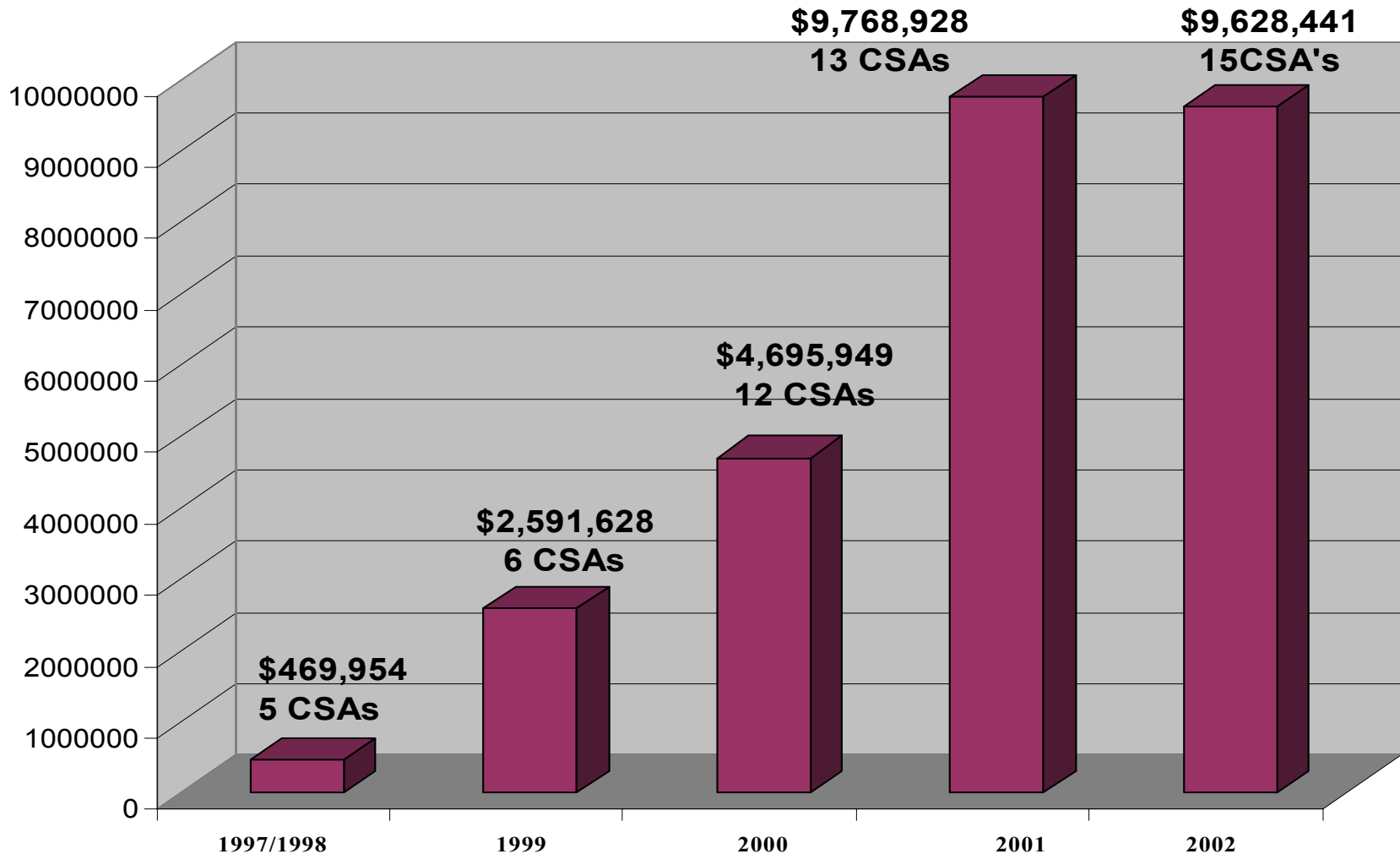
**\$ Value: \$3,000 - \$1,000,000+**

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### Aircraft Division CSA History





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**or**

**Contact NAWCAD Business  
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**Patuxent River: 301-342-1133**

**Lakehurst : 732-323-1111**